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DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
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The Availability and Pricing of Liquor Liability Insurance in the State of Michigan

**A market competition study issued by
Commissioner Ken Ross**

August 2010

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Executive Summary

The Commissioner of the Office of Financial and Insurance Regulation (OFIR) regulates the insurance marketplace. Michigan Complied Laws (MCL) 500.2409b requires the Commissioner to issue an annual report and certify whether liquor liability insurance is reasonably available at a reasonable price in Michigan.

The Michigan Liquor Control Commission (LCC) is the regulatory agency responsible for enforcing the Michigan Liquor Control Code of 1998 (the Act). Beginning April 1, 1998, the Act required liquor licensees to show proof of financial responsibility of at least $50,000. Liquor licensees typically meet this requirement by purchasing a liquor liability insurance policy, but it can also be met by a surety bond or through membership in a limited liability pool created pursuant to MCL 500.6506.

The LCC may waive liquor licensees' proof of financial responsibility requirement if the Commissioner certifies in an annual report prepared pursuant to MCL 500.2409b that the market lacks reasonable availability of liquor liability insurance at a reasonable premium.

For the calendar year ended December 31, 2009, OFIR collected data from different sources and analyzed the data to determine whether liquor liability insurance is reasonably available in Michigan at a reasonable price. As a result of the study, the OFIR Commissioner concludes that liquor liability insurance is reasonably available in Michigan at a reasonable price.

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Introduction

The Commissioner of the Office Financial and Insurance Regulation (OFIR) regulates the insurance marketplace. Michigan Complied Laws (MCL) 500.2409b requires the Commissioner to issue an annual report and certify whether liquor liability insurance is reasonably available and reasonably priced in Michigan. This report is the 19^{th} report issued to meet this requirement.

Regulation of liquor sales in Michigan began with the enactment of 1933 PA 8, which was known as the Dram Shop Act. This act was subsequently repealed and replaced by 1998 PA 58, the Michigan Liquor Control Code of 1998 (Act). The Michigan Liquor Control Commission (LCC) is the regulatory agency responsible for enforcing the Act. Among other provisions, the Act prohibits the sale of liquor to minors and intoxicated persons. Liquor retailers that violate the laws are subject to fines, license revocation, and private rights of actions for physical damage, injuries, and deaths caused by intoxicated persons. Requiring liquor retailers to assume the liability for the illegal sale of liquor promotes care in the sale of liquor and facilitates the means of recovery for persons injured by the intoxicated person. To protect against these potential liabilities, liquor retailers typically purchase liquor liability insurance. Liquor liability insurance covers the liquor retailer's cost of defending against liquor liability lawsuits and pays the outcome of a lawsuit settlement or award.

In 1985 and 1986, the liquor liability insurance market experienced the harsh side of the underwriting cycle. Rates were high, sources to purchase liquor liability insurance were scarce, and many Michigan liquor retailers were conducting business without purchasing insurance. To address this situation, the legislature passed 1986 PA 176, amendments to the Act. These amendments benefited both liquor retailers and the general public. Liquor retailers benefited from shortened limitation timeframes being placed on injured parties who file notice of a claim, the rebuttable presumption that no liquor licensee other than the last licensee to sell, give, or furnish liquor to a minor or visibly intoxicated person was presumptively responsible for the visibly intoxicated person, and elimination of lawsuits by relatives of the intoxicated person. Requiring liquor retailers to show proof of financial responsibility to obtain or renew their liquor licenses and stronger sanctions for violations of the Act were intended to benefit the general public.

Beginning April 1, 1988, the Act required liquor licensees to show proof of financial responsibility of at least $50,000. Liquor licensees typically meet this requirement by purchasing a liquor liability insurance policy, but it can also be met by the licensee providing a surety bond, cash, investment deposit, or letter of credit. A report obtained from the LCC showed that 99% of the licensees near the end of 2009 proved financial responsibility through a commercial liability insurance policy.

Background on the Liquor Liability Insurance Market Conditions

In 1986, two surplus lines insurers dominated the independent retailers' market, writing 96.5% of the written premium. Frequent lawsuits and high damage awards hurt profitability, causing only a few insurers to write liquor liability insurance in Michigan, and those policies had small coverage limits.

After 1986, the market began to soften due to improved insurer profitability, enactment of amendments to the Act, and actions taken by the Commissioner. After holding a public hearing, the Commissioner determined that liquor liability insurance was not readily available in Michigan at a reasonable premium. The Commissioner issued an order that allowed the formation of limited liability pools pursuant to MCL 500.6506 for the purpose of issuing liquor liability insurance policies.

Amendments enacted by 1986 PA 176 reduced the number of lawsuits against liquor retailers and required liquor retailers to provide proof of financial responsibility subject to a determination by the Commissioner that liquor liability insurance was available in Michigan at a reasonable premium. This action automatically created a market for liquor liability insurance and ensured a means of compensating victims of drunken driving accidents. 1986 PA 176 caused insurers to anticipate a decline in the number of liquor liability lawsuits and damage awards in Michigan and to make liquor liability coverage more available.

Public Hearings

The LCC may waive liquor licensees' proof of financial responsibility requirement if the Commissioner certifies in an annual report prepared pursuant to MCL 500.2409b that the market lacks reasonable availability of liquor liability insurance at a reasonable premium.

The Commissioner held the first public hearing in October 1987 to determine whether liquor liability insurance was reasonably available in Michigan at a reasonable premium for liquor retailers in accordance with 1986 PA 173. At the hearing, liquor retailers unanimously stated that liquor liability insurance was not reasonably available at a reasonable premium. However, the Commissioner found that, based on estimated loss ratios, projected profits, and the closeness of the premium charges to expected losses, liquor liability insurance was available at a reasonable premium. Later Commissioner studies showed that there were at least 21 insurers writing liquor liability coverage in Michigan at this time, including two limited liability pools.

In spite of protests by many liquor retailers, the proof of financial responsibility requirement took effect on April 1, 1988. After that date, to obtain or renew a liquor license, retailers must provide proof of financial responsibility in the form of an insurance policy or bond of at least $50,000. At public hearings held later in 1988, 61 retailers testified against the requirements.

In January 1989, another public hearing was held to determine whether allowing formation of limited liability pools to issue liquor liability policies was still needed. Only a few insurance company representatives attended this hearing and no one testified. No liquor licensees attended the hearing, and subsequently, the Commissioner received several no comment letters. Given the appearance that the market was adequately supplying this insurance, the Commissioner issued an order precluding the formation of any new limited liability pools to write liquor liability insurance.

Mandated Considerations

To assure that licensees can obtain the mandatory liquor liability insurance coverage, MCL 500.2409b requires the Commissioner to annually issue a report detailing whether liquor liability insurance is reasonably available in Michigan at a reasonable premium. If, based on this annual report, the Commissioner certifies that liquor liability insurance is not reasonably available or is not available at a reasonable premium, the LCC may waive the proof of financial responsibility requirement in accordance with MCL 436.1803(2).

Determining the availability and reasonableness of pricing of liquor liability insurance in accordance with MCL 500.2409b requires the Commissioner to consider specific aspects of the market. To this end, the statute requires that the Commissioner evaluate the structure of the liquor liability market to ensure that no insurer controls the market and that there are enough insurers to provide multiple options to liquor licensees. The Commissioner must consider the disparity among liquor liability insurance rates and evaluate whether overall rate levels are excessive, inadequate, or unfairly discriminatory. The Commissioner may consider any other relevant factors in making the determination.

Standards of Competition Applied in this Study

Economic theory provides that an industry is perfectly competitive only when there are a large number of businesses selling a homogenous commodity and each business' share of the market is so small that no one business' output decisions are able to affect the price of the commodity. In addition, under perfect competition, there would be no barriers to the entry of new businesses, for example, businesses could easily enter and exit an industry.

Since the conditions for perfect competition are ideal, they would not be expected to be found in the real world. Accordingly, OFIR uses workable competition as the standard for evaluating the competitiveness of the liquor liability insurance market. A market is considered as workably competitive when it reasonably approaches the structural, conduct, and performance characteristics of perfect competition.

The number and size distribution of buyers and sellers, extent of barriers to entry into the market, cost structures, availability of information to buyers and sellers, and degree of product differential determine market structure. Market conduct reflects the behavior of firms in pricing, establishing output levels, designing products advertising, innovation, and capital investment. Market performance refers to price, profit and output levels, the degree of cost efficiency, and the rate of technological progress.

While the above conditions for perfect and workable competition apply to a static analysis, the underwriting cycle plays a role in the short-term performance of the property and casualty insurance industry. The cycle is characterized by alternating periods of increasing and decreasing competition. Competitive or "soft" markets are characterized by falling rates, increasing availability, growing loss ratios, and diminishing insurer surpluses. These conditions eventually raise loss ratios sufficiently to cause insurers to raise their rates and reduce their volume, which ultimately restores profitability and surplus to the insurer. This, in turn, ushers in renewed price-cutting and increased availability, continuing the cycle.

Elements Considered in Determining State of Competition

MCL 500.2409b requires the report to be based on relevant economic tests, but not limited to those in Section 2409b. Therefore, this report is based on the following factors and shall be considered by the Commissioner for the purpose of determining the competitiveness of the liquor liability insurance market in Michigan:

a) The extent to which any insurer controls all or a portion of the liquor liability insurance market.
b) Whether the total number of companies writing liquor liability insurance in Michigan is sufficient to provide multiple options to liquor licensees.
c) The disparity among liquor liability insurance rates and classifications to the extent that such classifications result in rate differentials.
d) The availability of liquor liability insurance to liquor licensees in all geographic areas and all types of businesses.
e) The residual market share.
f) The overall rate level must not be excessive, inadequate, or unfairly discriminatory.
g) Any other factors the commissioner considers relevant.

Factors (a) and (b) listed above are economic tests of the market structure for competition. These elements relate to the size and number of insurers in the Michigan liquor liability market, and the ease of entry and exit from the market.

Businesses behave competitively when they independently and aggressively seek business by offering the most favorable terms to buyers while earning a normal profit. Noncompetitive conduct would be characterized by collusive behavior aimed at restricting output and fixing prices to raise profits. If insurers offering coverage in the liquor liability insurance marketplace are behaving competitively, there should be no evidence of rate fixing, tacit agreements, or joint actions designed to limit competition.

Factors (c) through (f) above are economic tests of the market performance. Economic theory provides that a competitive market will achieve an optimal allocation of resources. This means that the market price will equal the cost of producing the last unit of output, each business will produce a level of output where its average cost is minimized, and investors will receive a rate of return just equal to the cost of capital. In effect, a competitive market structure causes firms to behave competitively, which leads to market performance favorable to consumers. If the Michigan liquor liability insurance market exhibits workable competition, its performance should reasonably approach the perfectly competitive ideal.

A competitive market structure should result in competitive conduct by insurers. Other relevant factors (g) used to evaluate market conduct are profitability and complaints received from the insureds regarding the reasonable availability or reasonableness of prices by the liquor liability insurers.

Data Collection

To write liquor liability insurance, an insurer obtains authorization from OFIR to write the casualty line of insurance. Casualty encompasses a broad range of risks for which financial data is tracked by line of insurance in the annual and quarterly financial statements that are submitted to state regulators.

Admitted and surplus lines insurers writing business in Michigan are required to annually file reports, in addition to the annual and quarterly financial statements, with OFIR. One of the required reports for insurers authorized to write casualty is to complete Form FIS 0118, Municipal/Liquor

Liability Report of Premiums and Losses for Michigan. One purpose of the form is to collect data to use in the evaluation of the competitiveness of the Michigan liquor liability marketplace.

Data obtained from the LCC includes a list of insurers with a number of licensees insured by each insurer.

A Commissioner Inquiry was sent to selected insurers to obtain data on the rates charged for liquor liability financial responsibility insurance.

Data Analysis

There was a significant difference this year when the data reported by liquor licensees was compared to the data reported by insurers. The top premium writers of liquor liability insurance, according to the premiums written as stated on Form FIS 0118 (which ties to liquor liability coverage included in line 17 of the annual financial statement), were different from the top insurers reported by the largest number of liquor licensees to be providing their financial assurance coverage.

Further research into the disconnect revealed that as more and more insurers have entered the Michigan commercial liability marketplace, insurers are competing away profits by packaging coverages differently to provide a wider array of coverages at a reasonable rate. Packaging liquor liability with other commercial liability coverages was not a common practice a few years ago. Insurers are trending away from separately selling liquor liability insurance in favor of selling more comprehensive package liability policies or business owner policies. While this increased option in competition is good for businesses, it creates a new dilemma in terms of data collection specifically on liquor liability coverage. Insurers are reporting the data from providing liquor liability insurance in one of three ways on the annual statement by line of business state page (Exhibit of Premiums & Losses-Statutory Page 14):

1. Line 17, other liability. Liquor liability financial responsibility coverage is listed on this line, but so are other commercial liability lines such as: elevators and escalators, errors and omissions, professional liability other than medical, environmental pollution, excess and umbrella, and personal injury liability.
2. Line 5.2 is part of a multi-peril package that includes commercial liability coverages that would normally be shown on separate annual financial statement lines combined into one policy. For example, the package sold may include property and casualty coverages for a hotel/restaurant chain and includes required financial responsibility coverage for liquor liability.
3. Line 17, other liability. General liability packages combine two or more commercial liability coverages. For example, the package may include general liability coverage for a pharmacy chain that sells beer and wine, including the required financial responsibility coverage.

Packaging liquor liability insurance with other liability coverages is an indication that insurers are competing for customers by seeking more cost effective methods of providing the financial responsibility coverage to liquor licensees. The impact of discovering this change is two-fold:

- The insurers are capturing the data the way they are selling the coverages; blended in with multi-peril coverages, blended into a general liability policy, or as a separate liability coverage.
- In order to capture data for a larger share of the market, OFIR must update its data capturing methodology.

To address the data capture issue going forward, the Commissioner could consider holding a public hearing each year to collect qualitative data to supplement the quantitative data. In addition, the Commissioner could consider one or more alternative methods of capturing data because of the evolving nature of this market. However, without putting additional costs onto insurers, it is almost impossible to separate out the liquor liability portion of a policy.

OFIR continues to work with the LCC to assure insurers are properly authorized to write business in Michigan and identify any insurers from their data bases that no longer write liquor liability. As a result, 18 insurers were removed as no longer writing in Michigan and 1 was identified as not being properly licensed in 2009. OFIR is working with the unlicensed company to pay the necessary regulatory fees and to obtain proper licensing.

Alternative Suggestions

1. OFIR should continue to work closely with the LCC to use data from their licensees on the demand side of the market.
2. Insurers could continue to report this data on the FIS 0118 and the Commissioner could continue to capture this data and, then, supplement it with other steps, by holding a hearing and/or surveying liquor licensees.
3. The Commissioner could require the insurers to collect and report the data on liquor liability financial responsibility coverage separately. This method could be quite costly to the insurers and could increase the cost of liquor liability insurance in the short run.
4. The Legislature could adopt legislation to eliminate the need for this report. OFIR is no longer able to capture information to meet the needs of the current legislation given the way insurers are packaging these policies. OFIR will continue to monitor activity as it relates to the number of businesses insured and the corresponding insurer activity. As long as there is continual movement throughout the industry and businesses have multiple ways of obtaining coverage, we can assume there is competition in the market and rates are reasonable.

Therefore, this year's data analysis principally relied on data provided by the LCC collected from its licensees. The available data was analyzed for this competition study by market structure, market conduct, and market performance.

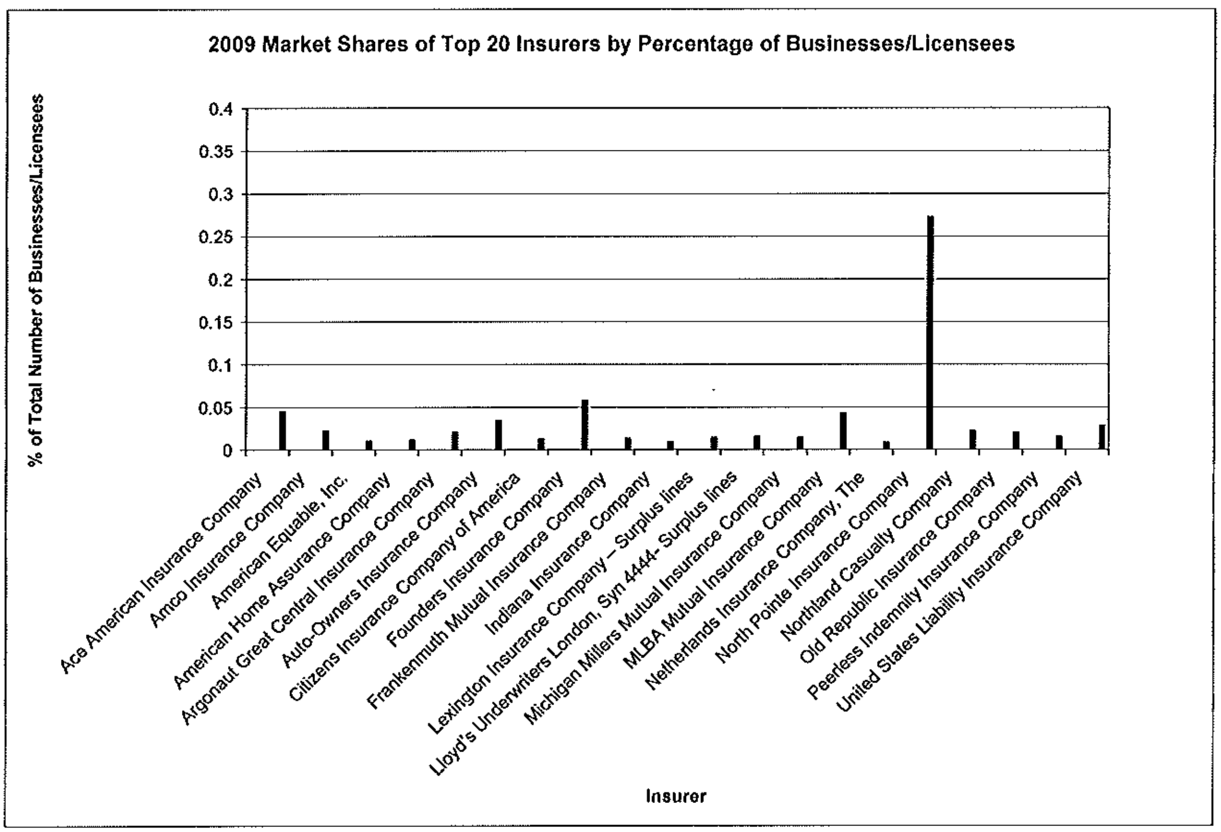
Market Structure Factors

Factor (a) The extent to which any insurer controls all or a portion of the liquor liability insurance market.
Factor (b) Whether the total number of companies writing liquor liability insurance in Michigan is sufficient to provide multiple options to liquor licensees.

Market structure is a relevant factor in evaluating the availability of liquor liability insurance. Market concentration, the number of insurers, and the turnover rate of insurers are examined using liquor licensee data.

According to the LCC, near the end of 2009, there were 202 insurers providing at least the minimum liquor liability insurance as financial responsibility coverage to 16,139 retail liquor establishments through an insurance policy. Since the proof of financial responsibility requirement became effective in 1988, many admitted insurers have entered the Michigan liquor liability insurance market. As availability of coverage has expanded, affordability of coverage has greatly improved.

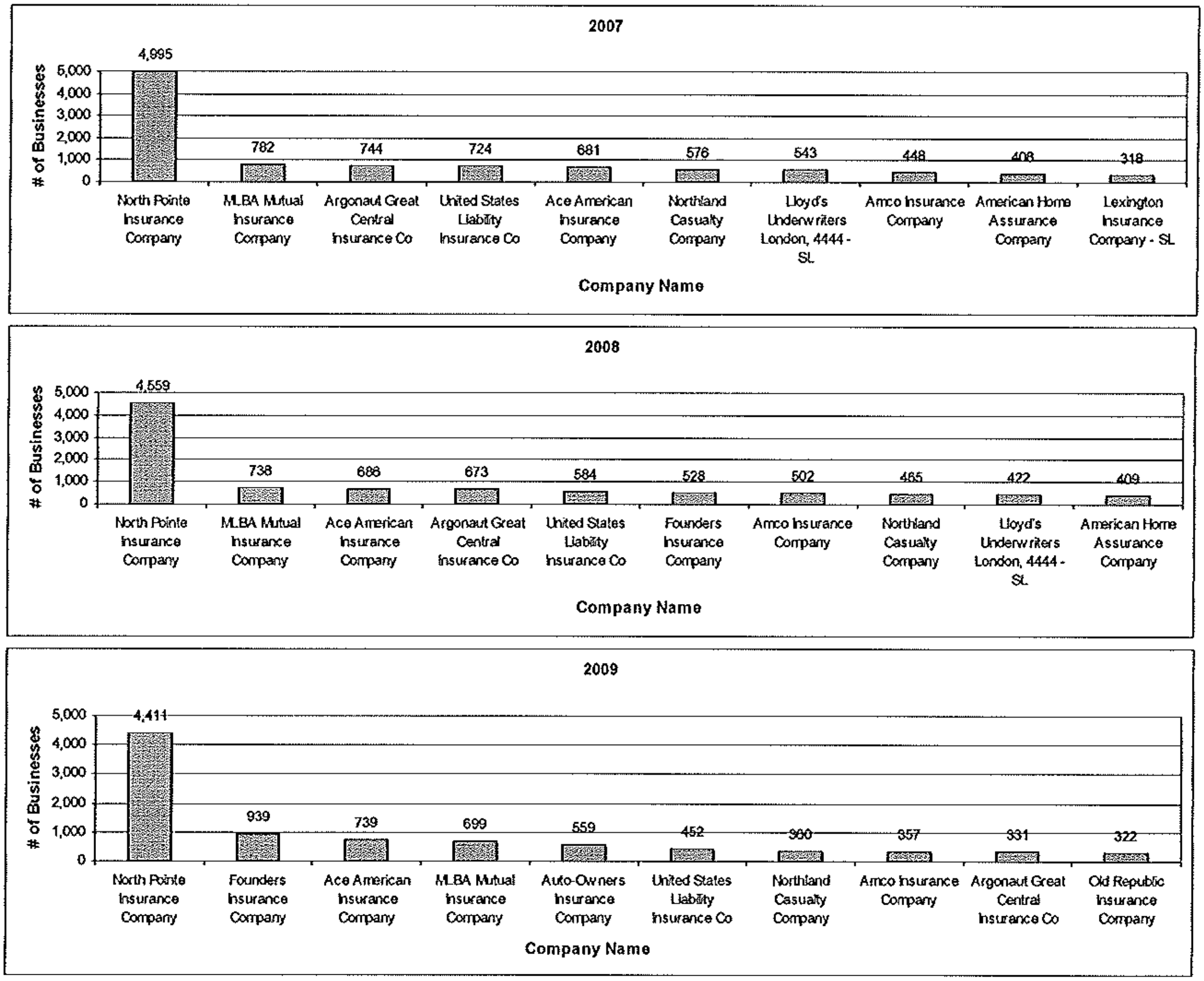
Figure 1 – Market Shares of Top 20 Insurers Based on Number of Licensees/Businesses



Source: Liquor Control Commission

Appendix A charts the top 20 insurers per year by the number of liquor licensees and market share percentage over the last 5 year period. There has been considerable movement with insurers entering and exiting the top 20 insurers in the liquor liability market. The free movement of insurers in and out of the top 20 is an indicator of a competitive market.

Figure 2 – 3 Year Comparison of Top Ten Insurers Based on Number of Businesses/Licensees



Data provided by the Liquor Control Commission

Overall observations of the changes in market share from 2005 through 2009:

- Thirty Three insurers have appeared at least once during the 5 year period as being in the top 20.
- North Pointe Insurance Co. has consistently ranked as the number one insurer by market share over the 5 year period. Its market share has ranked from a high of 34.7% in 2005 to a low of 27.2% in 2009.
- Founders Insurance ranked number two by market share in 2009.
- In addition to North Pointe and Founders Ins., 6 insurers were ranked in the top 20 over the 5 year period: Ace American Insurance Co., American Home Assurance Co., Argonaut Great Central Insurance Co, Indiana Insurance Co., MLBA Mutual Insurance Co., and United States Liability Insurance Co.
- Of the 33 insurers in the top 20 over the last 5 years, 4 were surplus lines insurers; Columbia Casualty Co., Lexington Insurance Co., and 2 Lloyds of London syndicates. Columbia Casualty, however, did not report any business this year.
- In addition to Columbia Casualty not reporting any premiums or licensees, Bowling Centers Insurance Corp., Inc. and Lloyd's Underwriters London 1245 did not report any data for 2009.

Market Performance Factors

Factor (c) The disparity among liquor liability insurance rates and classifications to the extent that such classifications result in rate differentials.
Factor (d) The availability of liquor liability insurance to liquor licensees in all geographic areas and all types of business.
Factor (e) The residual market share.
Factor (f) The overall rate level must not be excessive, inadequate, or unfairly discriminatory.

Availability and the Residual Market

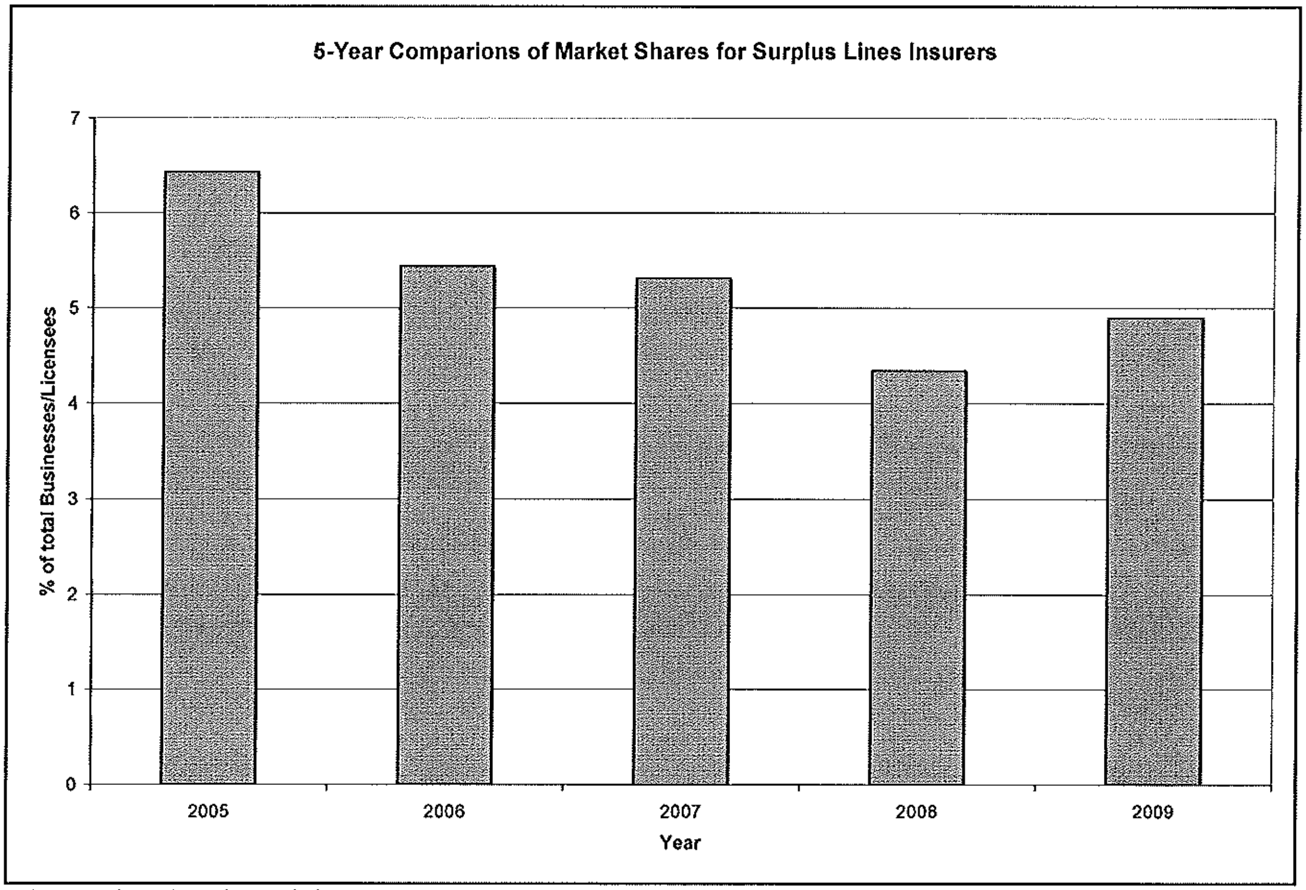
There are two categories of insurers offering coverage in the liquor liability market. The first consists of insurers who are authorized by the Commissioner to transact business in Michigan. Authorized insurers are commonly referred to as "admitted" carriers. Most commercial liability lines of insurance are exempt from seeking approval of OFIR on their rate filings. Insurance is also written by insurers that are not authorized or are "non-admitted" in Michigan. These insurers are called surplus lines insurers. Although surplus lines insurers are not regulated by the Commissioner, they must transact their business through a producer licensed by the Commissioner.

Surplus lines insurers may establish policy terms with more restrictive conditions, limitations, and exclusions than admitted insurers because they are not regulated by the Commissioner. In addition to the establishment of more restrictive policy language, coverage obtained through the surplus lines market is neither protected by the Michigan Insurance Code, nor does it have protection under the Property and Casualty Guaranty Association in the event of insurer insolvency. However, surplus lines insurers are fulfilling a need within the liquor liability market, either through establishing competitive rates or providing coverage for businesses that have more difficulty obtaining business in the admitted market.

Given the relative ease of entry into and exit from markets and specific lines of insurance, surplus lines insurers can be viewed as a safety valve. This is particularly true for companies having abnormal risks and difficulty finding an admitted insurer or because admitted insurers have stopped underwriting certain lines of insurance during the hard phase of the underwriting cycle. Surplus lines insurers are a free market response for handling risks that otherwise might require formation of a residual market -- a common regulatory response to such difficulties.

With this in mind, the percentages of the market covered by surplus lines are a fair measure of insurance availability. The liability insurance market, as represented by the number of businesses covered by each carrier, is used to calculate each carrier's market share in Michigan. During the hardening market of the mid eighties, there was an expansion of the market share of liquor liability insurance written by surplus lines carriers, peaking at 98% in 1986. Appendix A and Figure 1 illustrate the declining market share of surplus lines from 2005 to 2008, with a slight increase in 2009. A decline in premium from 1986 to present reflects the perceived impact of tort reforms and the general softening of this market.

Figure 3 – Market Share of Surplus Lines Insurers Based on Number of Licensees/Businesses



Source: Liquor Control Commission

Rate Levels

Apart from whether liquor liability insurance should be a required coverage, high cost was the biggest complaint at the time 1986 PA 176 was enacted. One statutory requirement is that this report must consider an overall premium rate level which is not excessive, inadequate, or unfairly discriminatory, as defined in MCL 500.2403(1)(d).

In reviewing responses to Rate Survey of Selected Liquor Liability Carriers sent out by OFIR for 2009 rate and minimum premium information, overall premium rate levels are not excessive, inadequate, or unfairly discriminatory. Premium rates are adjusted up or down based on several variables: Hours of operations, number of violations, live entertainment, dance floor, location (exposure inside or outside), employment training, claims experience, and other rating factors.

Minimum Premiums

When the proof of financial responsibility requirement took effect, the former Insurance Bureau received a number of complaints from small licensees claiming they could not afford liquor liability insurance. This was due, in part, to the high minimum premiums established by companies as part of their underwriting plan. A minimum premium is the lowest premium for which a company will issue a policy, despite the amount that is actually generated when rates are applied to liquor receipts.

If, for example, an insurance company established for take-out liquor stores a $.80 rate per $100 of liquor sold, and a minimum premium of $500, a store would have to sell $62,500 of liquor annually to generate the minimum premium. As a store's liquor receipts decline, the effective rate it pays for insurance increases. The effective rate for a store selling only $10,000 of liquor annually and paying a $500 premium is $5.00 per $100 of liquor sold.

Among the companies surveyed in 1987, average minimum premiums were $700 for the lowest-risk class and as high as $3,000 for bars, taverns, and clubs. In 1988, the Commissioner believed that these high minimum premiums imposed an effective rate that was unfairly discriminatory to small businesses and requested insurers to reduce their rates. Most insurers complied with this request by reducing minimum premiums. The Commissioner took administrative action against insurers that did not reduce their rates. Subsequent negotiations with the remaining insurers resulted in a resolution of this issue.

Market Conduct

Factor (g) Any other factor the Commissioner considers relevant.

A report obtained from the LCC showed that 99% of the licensees near the end of 2009 used a liability insurance policy to prove they are meeting the financial assurance requirement. The alternative ways that a liquor licensee can prove that it is complying with the minimum financial responsibility requirement is to provide a surety bond (also insurance); cash; stocks and bonds; a combination of stocks, bonds and cash; trust; certificate of deposit; or, a letter of credit.

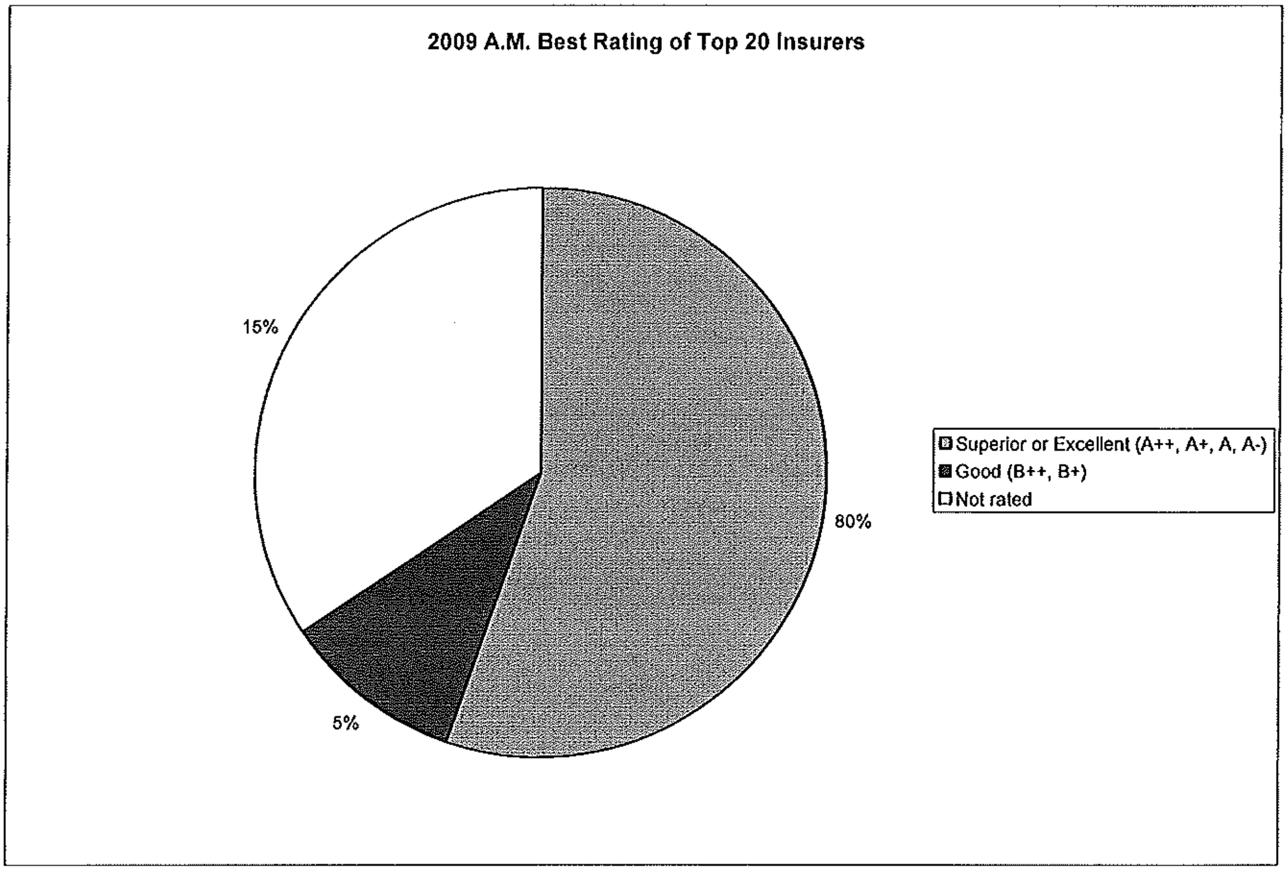
Insurer Quality

The A.M. Best Co. has evaluated insurance companies and ranked them in terms of financial strength and operations for over 100 years. As a reputable resource in the insurance industry, A.M. Best ratings of the insurers provides insight into the financial strength of each through an extensive process where it evaluates and assigns a rating of its opinion of an insurer's ability to meet its financial obligations. "Secure" financial ratings are as follows:

A++, A+ = Superior
A, A- = Excellent
B++, B+ = Good

Other less than Secure ratings of Vulnerable range from B (fair) to F (in liquidation). Exhibit 1 shows the A.M. Best rating of each insurer ranked in the top 20 in 2009. Nineteen of 20 insurers were rated as secure by A.M. Best, while the remaining insurer was a non-rated surplus lines insurer. Sixteen of the 20 insurers rated secure were superior or excellent, and 3 were rated good. This indicates that the Michigan liquor liability marketplace is a desirable market in which to compete by financially strong rated insurers.

Figure 4 – 2009 A.M. Best Rating Summary of Top 20 Insurers



Source: A. M. Best

Insurers generally revise the class structure of its underwriting polices to better reflect the market's conduct. Where risk classifications for rating purposes were previously based on six to seven classes of retail liquor licenses, commonly, insurers now further segment these classes based on various characteristics of the individual businesses. Many companies, for example, now divide the restaurant and bar/tavern classifications into subgroups according to the ratio of food to liquor served, or the type and amount of entertainment offered. This practice enables an insurer to attract with lower rates "low risk" business within a licensee class while maintaining an acceptable loss ratio by having higher rates for the higher risk licensees.

Exhibit 1

2009 Top 20 Liquor Licensees by Proof of Financial Responsibility Provider
(Market Share based on Covered Businesses)

	Insurer	Licensees	Market Share	Direct Premiums Written	Loss Ratios	A.M. Best Rating
1	North Pointe Insurance Company	4,411	27.20%	6,359,919	13.97%	A-
2	Founders Insurance Company	939	5.80%	1,883,124	43.35%	A-
3	Ace American Insurance Company	739	4.50%	13,738	0%	A+
4	MLBA Mutual Insurance Company	699	4.30%	1,717,853	15%	B++
5	Auto-Owners Insurance Company	559	3.40%	13,847	0%	A++
6	United States Liability Insurance Company	452	2.80%	423,719	45.79%	A++
7	Northland Casualty Company	360	2.20%	289,686	190.40%	A+
8	Amco Insurance Company	357	2.20%	25,414	1.55%	A+
9	Argonaut Great Central Insurance Company	331	2.00%	163,030	7.40%	A
10	Old Republic Insurance Company	322	2.00%	N/A	N/A	A+
11	Scottsdale Insurance Company - S/L	255	1.60%	N/A	N/A	A+
12	Lloyd's Underwriters London, Syn 4444-S/L	250	1.50%	N/A	N/A	N/R
13	Peerless Indemnity Insurance Company	243	1.50%	3,925	0%	A
14	Michigan Millers Mutual Insurance Company	233	1.40%	229,463	5.95%	B++
15	Lexington Insurance Company – S/L	225	1.40%	N/A	N/A	A
16	Frankenmuth Mutual Insurance Company	204	1.30%	156,266	N/A	A+
17	Travelers Casualty Insurance Co. of America	196	1.20%	16,184	0%	A+
18	Citizens Insurance Company of America	195	1.20%	43,551	0%	A
19	Employers Mutual Casualty Company	194	1.20%	113,236	515.09%	A-
20	Selective Insurance Co. of South Carolina	189	1.20%	N/A	N/A	A+
	SUMMARY					
	Licensees with Top 20 Insurers	11,353	69.98%			
	Licensees with Other Insurers	4,786	29.44%			
	Total Report of Licensees Using Insurance As Their Financial Responsibility	16,139				
	Licensees Using Methods Other Than Insurance To Meet Financial Responsibility	117	0.70%			
	Liquor Control Commission's Reported Licensees	16,256				

Loss Ratio % = Loss Incurred / Premiums Earned
0% means No Losses were Reported by the insurer.
N/A means No Premiums or Losses Reported by the insurer.
N/R means Not Rated.
Source: Liquor Control Commission Liquor licensee records
Office of Financial and Insurance Regulation's FIS 0118 form

The diversity of rate classifications complicates comparisons of specific rates by insurers. While one insurer may offer a single rate for bars and taverns, it is not unusual for another to offer as many as eight classes based on the amount and type of entertainment. Insurers typically have different classes within license types which vary by percentage of revenues from liquor sales. Territorial rates exist within classes, with rural rates generally slightly lower than rates in southeast Michigan.

MCL 500.2405 requires each admitted insurer that delivers or issues for delivery liquor liability insurance policies in this state to develop and maintain a server training premium discount plan based upon the completion of a certified server training course that complies with the Act. While schedule rating criteria vary considerably by company, the total impact on an insured's rate may not exceed a 25% increase or decrease. Schedule rating is a method of rating used by insurers that use charges and credits to modify a base rate based on specific characteristics of the risk. Schedule rating criteria include employer selection, training, and supervision of employees, the existence of entertainment (bands, dance floors, devices, etc.), following risk management techniques (such as designated drivers or cab programs), management experience, percentage of young patrons, and conditions of premises and equipment.

Surplus lines insurers typically do not use schedule rating or allow server-training discounts because of the difficulties in monitoring compliance by insureds. In order to compete, most surplus lines insurers have simply reduced rates for all licensee classifications. While some surplus lines insurers have left the market due to the increasing competition from admitted insurers, several continue to have competitive rates and are keeping their clientele.

Conclusions

The Commissioner finds that:

a) The extent to which any insurer controls all or a portion of the liquor liability insurance market.

The market of liquor liability insurance is not dominated by only a few insurance companies. There is no indication that competition does not generally exist in this market. Consistently over the last 5 years, the top 20 writers shared no more than 68.6% of the market, which includes a declining share of the surplus lines insurers. The top insurer controlled 27.2% of the 2009 market declining from 34.7% in 2005. The data also indicates lack of market barriers with 13 companies entering the market and 12 exiting the market between 2005 and 2009.

b) Whether the total number of companies writing liquor liability insurance in this state is sufficient to provide multiple options to liquor liability purchasers.

In 2009, based on most recent available data, there were 202 companies providing liquor liability coverage in the form of a liquor liability policy or coverage endorsed under a general liability policy with 23 of these companies in the surplus lines.

c) The disparity among liquor liability insurance rates and classifications to the extent that such classifications result in rate differentials.

Rate data from the admitted and non-admitted carriers is not a complete data capture in Michigan. The diversity of rate classifications further complicates specific rate comparisons. The data capture issue is reviewed in the data analysis section of this report along with considerations of alternative methods of data capture.

d) The availability of liquor liability insurance to liquor licenses in all geographic areas and all types of business.

The market has softened since the 1980s and there seems to be no information for OFIR to believe there is a problem with the availability of liquor liability insurance in all geographic areas and to all types of business in Michigan.

e) The residual market share.

Market share of surplus lines in the liquor liability market was 4.9% of the 16,245 licensees with liquor liability coverage in 2009; showing a decline over the last 5 years from 6.43% in 2005. The market share of surplus lines in 2009 was a 3.18% drop from last year. This decline is consistent with a softening of the liquor liability market and the increase in overall competition in the insurance market.

f) The overall rate level must not be excessive, inadequate, or unfairly discriminatory.

Rate information obtained from surveying the top 7 carriers writing liquor liability insurance in Michigan does not reveal excessive, inadequate or unfairly discriminatory rate levels.

Certification

Based on the analysis and findings contained in this report, I certify that liquor liability insurance is reasonably available in Michigan at a reasonable premium.

K. R

Ken Ross
Commissioner of Financial and Insurance Regulation

August 13, 2010

Date

Appendix A – Top Insurers Ranked by Number of Licensees/Businesses in Alphabetical Order

Insurer	2005		2006		2007		2008		2009	
Ace American Insurance Company	216	1.33%	634	4.00%	681	4.20%	686	4.30%	739	4.50%
Amco Insurance Company	128	0.79%	285	1.80%	448	2.80%	502	3.10%	357	2.20%
American Equable, Inc.	247	1.52%	242	1.50%	238	1.50%	197	1.20%	163	1.00%
American Home Assurance Company	414	2.54%	408	2.50%	408	2.50%	409	2.50%	172	2.50%
American States Insurance Company			206	1.30%	215	1.30%	116	0.70%	58	0.40%
Argonaut Great Central Insurance Co	474	2.91%	859	5.40%	744	4.60%	673	4.20%	331	2.00%
Auto-Owners Insurance Company							322	2.00%	559	3.40%
Badger Mutual Insurance Company	238	1.46%	237	1.50%	226	1.40%	164	1.00%	103	0.60%
Citizens Insurance Company of America	163	1.00%	165	1.00%	184	1.10%	171	1.10%	195	1.20%
Columbia Casualty Company - SL	403	2.47%					1			
Employers Mutual Casualty Company			169	1.10%	181	1.10%	160	1.00%	194	1.20%
Founders Insurance Company							528	3.30%	939	5.80%
Frankenmuth Mutual Insurance Company							171	1.10%	204	1.30%
Great Midwest Ins Company							51	0.30%	48	0.30%
Harleysville Lake States Insurance Co	149	0.91%	172	1.10%	181	1.10%	168	1.00%	167	1.00%
Indiana Insurance Company	195	1.20%	210	1.30%	223	1.40%	239	1.50%	144	0.90%
Lexington Insurance Company - SL	399	2.45%	274	1.70%	318	2.00%	277	1.70%	225	1.40%
Liberty Mutual Insurance Company			204	1.30%			85	0.50%	85	0.50%
Lloyd's Underwriters London, 4444 - SL	648	3.98%	598	3.70%	543	3.30%	422	2.60%	250	1.50%
Michigan Millers Mutual Insurance Co					213	1.30%	242	1.50%	233	1.40%
MLBA Mutual Insurance Company	870	5.34%	816	5.10%	782	4.80%	738	4.60%	699	4.30%
Netherlands Insurance Company					231	1.40%	229	1.40%	129	0.80%
North Pointe Insurance Company	5,656	34.70%	5,323	33.20%	4,995	30.80%	4,559	28.50%	4,411	27.20%
Northland Casualty Company	453	2.78%	668	4.20%	576	3.60%	465	2.90%	360	2.20%
Old Republic Insurance Company	264	1.62%	224	1.40%	219	1.40%	316	2.00%	322	2.00%
Peerless Indemnity Insurance Company							368	2.30%	243	1.50%
QBE Insurance Company							74	0.50%	77	.50%
Safeco Insurance Co. of America	196	1.20%					4		4	
Scottsdale Insurance Company - S/L							20	0.10%	255	1.60%
Selective Insurance Co. of South Carolina									189	1.20%
State National Insurance Co. Inc.			159	1.00%			106	0.70%	58	0.40%
Travelers Casualty Insurance Co. of America							82	0.50%	196	1.20%
United States Liability Insurance Co	1,502	9.21%	890	5.60%	724	4.50%	584	3.60%	452	2.80%
Westport Ins Corp	136	0.83%					103	0.60%	49	0.30%
Totals for Top 20 Insurers by Year	**12,751**	**78.23%**	**12,743**	**79.50%**	**12,330**	**76.10%**	**12,138**	**75.40%**	**11,127**	**68.60%**
Total Licensees By Year	**16,300**		**16,029**		**16,219**		**16,123**		**16,245**	

Source: Liquor Control Commission liquor licensee records.

SL indicates the insurer is a surplus lines insurer.

Appendix B –Insurers Ranked by Number of Licensees/Businesses

Insurer	2005		2006		2007		2008		2009	
North Pointe Insurance Company	5,656	34.70%	5,323	33.20%	4,995	30.80%	4,559	28.50%	4,411	27.20%
Founders Insurance Company							528	3.30%	939	5.80%
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Totals for Top 20 Insurers by Year	12,751	78.23%	12,743	79.50%	12,330	76.10%	12,138	75.40%	11,353	69.98%
Total Licensees By Year	16,300		16,029		16,219		16,123		16,245	

Source: Liquor Control Commission liquor licensee records.

SL indicates the insurer is a surplus lines insurer.